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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 ADONNA FROMETA,

4
5 Plaintiff,

6 v. 07 CV 6372 (HB)

7 MARIO E. DIAZ-DIAZ and
8 ALL AMERICAN HAULERS RECYCLING,
9 Defendants.
-----x

10 New York, N.Y.
11 September 11, 2008
12 10:30 a.m.

13 Before:

14 HON. HAROLD BAER
15 District Judge
16 - and a jury -

17 APPEARANCES

18 SLAWEK W. PLATTA, PLLC
19 Attorneys for Plaintiff
20 BY. SLAWEK W. PLATTA

21 WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP
22 Attorneys for Defendants
23 BY: STUART A. MILLER
24 MICHAEL W. COFFEY
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1 (Trial resumed)

2 THE COURT: What have you got to tell me?

3 MR. PLATTA: Your Honor, I was requesting a conference
4 in order to settle the case with the parties, and I was asking
5 for ex parte discussion between me and my client and your
6 Honor. I was, however, informed this morning that the
7 defendants want to withdraw their prior offer of 500,000.
8 Again, our request at this point is a conference with you ex
9 parte to discuss the case and discuss settlement of this case.

10 THE COURT: I don't understand. What is it he's
11 telling me?

12 MR. MILLER: I can't speak for what he's telling you,
13 your Honor, but I can state that on behalf of our clients we
14 did withdraw the \$500,000 offer that we extended yesterday in
15 the beginning of deliberations.

16 THE COURT: Where is the discussion we are supposed to
17 have? I assume I'm allowed to do that.

18 MR. PLATTA: That's correct, your Honor. All I want
19 to do is have a discussion with you in order to settle the
20 case. However if you feel it's impossible, I am not going to
21 ask it again.

22 THE COURT: I'm glad to talk about it to resolve it,
23 but today is not a good day. If you're here and I have a
24 moment, which looks quite unlikely, I'll be glad to try and --
25 we have all of the seven defendants.

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1 MR. COFFEY: Your Honor, if I just may quickly, we
2 have extended a \$250 to \$750,000 range on a high-low offer to
3 the plaintiff. He has not rejected it or accepted it. That's
4 the best we are going to do at this time. He has to either
5 accept it or reject it.

6 THE COURT: Why don't we go in the robing room for a
7 minute. When you get everybody here, I'll let you know.

8 (In the robing room)

9 THE COURT: Tell me more how this high-low should
10 work, if it was to work at all. Where we are --

11 MR. MILLER: Your Honor, what we have offered
12 plaintiff for consideration is that in the event that the
13 jury -- whatever the number the jury comes back with, if it's
14 within the range of 250 --

15 THE COURT: Wait a second.

16 MR. MILLER: If the verdict comes in with a note
17 somewhere between 250 and 750,000, the number that the verdict
18 comes in for is the amount that the case would settle for. If
19 the verdict comes in in excess of \$750,000, the case would
20 settle for \$750,000 with no more money other than the 750. If
21 the verdict comes in for something less than 250 or a defense
22 verdict, the defendants would still settle the case for
23 \$250,000. This settlement would be nonappealable, no further
24 appellate reviews or motion practice. It would be a binding
25 settlement in its entirety.

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1 THE COURT: Which you would put on the record.

2 MR. MILLER: That's what we have extended to
3 plaintiff's counsel, and we have officially withdrawn the
4 \$500,000 offer.

5 THE COURT: What do you think this case at the moment
6 is worth? What is it you'd like to see in your client's
7 pocket?

8 MR. PLATTA: Your Honor, after the deposition of the
9 defense witness doctors, I don't think the case was worth
10 anything more than a million. My client was persuaded to look
11 for a policy in this case. However, I would like to have a
12 discussion without the presence of defendants with you
13 regarding settlement of this case.

14 THE COURT: If that's okay with them, it's okay with
15 me. Don't go far. This is going to be very quick. I have
16 seven defendants who are about to come out of the can, and we
17 got to service them.

18 (Defense counsel not present)

19 THE COURT: You want it on the record?

20 MR. PLATTA: Not on the record.

21 (Discussion off the record)

22 (In open court)

23 THE COURT: Another note in Frometa.

24 Dr. Krishna's records of seeing the plaintiff and his
25 referral to Dr. Babu.

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1 I'm prepared to give them those records if you can
2 produce them and not interfere with the rest of my day.

3 MR. PLATTA: Your Honor, Ms. Frometa would like to
4 make a statement on the record regarding offer from defendants.

5 THE COURT: If she wants to talk --

6 MR. PLATTA: I would like to put her on the record
7 regarding the offer that the defendants made in this case.

8 MR. MILLER: There is no objection to that, your
9 Honor.

10 THE COURT: You have the next case. Maybe as soon as
11 we give them these records we will have another moment.

12 (Recess pending verdict)

13 THE COURT: Ms. Frometa, why don't you go in the
14 witness box.

15 You are going to ask her some questions.

16 MR. PLATTA: Ms. Frometa, are you aware that there was
17 an offer of settlement made? Are you aware that there was a
18 high-low settlement offer on your case of \$250,000 to \$750,000,
19 which basically means that if you lose the case you will
20 collect 250,000; if you win, the maximum you can win is 750.
21 Or if the jury comes back with a verdict between 250 and 750,
22 this would be the number that you can take.

23 Do you understand that

24 MS. FROMETA: Yes, I understand it.

25 MR. PLATTA: Do you accept or reject this offer?

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1 MS. FROMETA: I will reject it.

2 MR. PLATTA: Are you satisfied with the assistance of
3 your counsel at this point?

4 MS. FROMETA: Yes, I am.

5 MR. PLATTA: Were you influenced by anyone in making
6 that decision?

7 MS. FROMETA: No one.

8 THE COURT: You can step down and we will move along.

9 (Recess pending verdict)

10 MR. COFFEY: Judge, we agree on these medical records.
11 What we don't agree on are billing records and the
12 reimbursements.

13 THE COURT: Let me see what you don't agree on.

14 Mr. Platta, you think these are irrelevant as well?

15 MR. PLATTA: Yes. The note was asking for Westchester
16 Medical care records and the records that defendants describe
17 as billing records are actually records of the visits that
18 happen and findings of the doctor. Some of them are billing
19 records, some of them are not. The records that are combined
20 together, they are actually billing records, but the rest of
21 them are just business records of treatment rendered to my
22 client.

23 THE COURT: This is the record --

24 MR. PLATTA: What you have in front of you, Judge,
25 right now is a billing record. The rest of the records --

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1 THE COURT: They are not asking for billing records.
2 They just want to know when she saw them.

3 MR. PLATTA: These records would not be applicable.
4 However, the other ones that you have in your right hand right
5 now, these are business records and they would be applicable.

6 THE COURT: Why don't we give them the business
7 records.

8 MR. COFFEY: On the top right there it says super
9 bill, top right of those. It's a bill.

10 MR. PLATTA: There is no mention of any dollar number
11 or anything on that and it only shows that the visit happened
12 on such and such date, which is on the left-hand top corner, as
13 well as treatment rendered by Dr. Krishna.

14 THE COURT: I don't understand. I am going to mark
15 this as Court Exhibit H. Why are there two? One is April and
16 one is March.

17 MR. PLATTA: These records are records of the
18 treatment, Judge. They are actually not bills. They are
19 treatment records showing the treatment rendered and the dates
20 when the treatment was rendered to my client. That's why they
21 are not bills.

22 THE COURT: They just want the dates. You don't have
23 one sheet of paper with the dates.

24 MR. PLATTA: I'm sorry?

25 THE COURT: You don't have a single sheet of paper

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1 with the dates that you went to visit.

2 MR. PLATTA: No, your Honor. Besides billing records,
3 no. The billing records would actually have dates.

4 THE COURT: I'm not interested in the billing records
5 unless they come attached to the records -- don't you have the
6 doctor's records of when he saw her?

7 MR. PLATTA: No, your Honor. They don't keep such
8 records, I guess.

9 THE COURT: These super bills, they just tell you what
10 was wrong with her.

11 MR. PLATTA: Exactly. And the dates when doctors saw
12 her on the top left-hand corner.

13 MR. COFFEY: There was no testimony to these
14 records -- I don't know if that's Dr. Krishna's records or not.

15 MR. PLATTA: These are Dr. Krishna's records and they
16 were actually subpoenaed to the courthouse as well as
17 introduced into evidence, as well as ruled by your Honor in the
18 beginning of the trial.

19 THE COURT: All I want you to do is write down the
20 dates that are in the right-hand corner that say 2/16/07.

21 MR. PLATTA: It says that --

22 THE COURT: I'm not giving them the whole record. You
23 sit down with a pencil and you look at these with your
24 adversary, and you put down what they are asking for. Let's
25 go.

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1 MR. PLATTA: From these we have to choose the dates.

2 THE COURT: We don't choose the date. You write the
3 date down.

4 MR. PLATTA: Correct.

5 THE COURT: The note says: Dr. Krishna's notes of
6 seeing the patient and his referral to Dr. Babu.

7 (Recess pending verdict)

8 THE COURT: The final note from the jury says: We,
9 the jury, have reached the verdict.

10 (Jury present)

11 THE DEPUTY CLERK: Madam Foreman, please stand up.

12 THE COURT: I gather you've reached a verdict.

13 THE FOREPERSON: Yes, we have.

14 THE COURT: My deputy clerk will read you through it.
15 Just listen to him and answer the questions.

16 THE FOREPERSON: Okay.

17 THE DEPUTY CLERK: Adonna Frometa against Mario
18 Diaz-Diaz and All American Haulers & Recycling.

19 Question 1: Has Ms. Frometa proved, by a
20 preponderance of the evidence, that the accident that took
21 place on February 14, 2007 was a proximate cause of any of her
22 injuries?

23 THE FOREPERSON: We, the jury, answered no.

24 THE COURT: She is finished, as I recall it. There
25 were no other questions to answer if you answered that question

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1 in the negative.

2 You want the jury polled, Mr. Platta?

3 MR. PLATTA: Yes, your Honor.

4 THE DEPUTY CLERK: Ladies and gentlemen of the jury,
5 you have heard your verdict as it has been recorded.

6 (Jury polled; each juror answered in the affirmative)

7 THE COURT: Ladies and gentlemen, you clearly took
8 this case to heart and were, I thought, extremely hard working.
9 So I'm sorry our time together is over, but I get the
10 impression that you probably don't share my view. Indeed, it
11 was a valuable experience for me and I trust it was for you and
12 you are discharged.

13 (Jury discharged)

14 THE COURT: Any motions that you choose to make will
15 be made in conformity with the federal rules, which I think has
16 a jurisdictional limit on the time, but I'm prepared to waive
17 that within reason. So just communicate with chambers as to
18 your timetable if you're planning to make any motions.

19 (Trial concluded)

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